

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2006 FEB -2 AM 8:11
REGION 8
Docket No. TSCA-08-2006-0001

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Verendrye Electric Cooperative, Inc.)
615 Highway 52 West)
Velva, North Dakota 58790-7417)
)
Respondent.)
)

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

COMPLAINT

1. This civil administrative enforcement action is authorized by Congress in section 16 (a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The United States Environmental Protection Agency ("EPA") regulations governing polychlorinated biphenyls ("PCBs") authorized by TSCA are set out in part 761 of Title 40 of the Code of Federal Regulations (CFR) and violations of the regulations constitute violations of the section 15 of TSCA, 15 U.S.C. § 2614 . The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 CFR part 22, a copy of which is enclosed.
2. The undersigned EPA officials have been properly delegated the authority to issue this action.
3. EPA alleges that Respondent has violated section 15 of TSCA, 15 U.S.C. § 2614, and proposes the assessment of a civil penalty as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge to disagree with (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty.
5. To disagree with the complaint, and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk , U. S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, within 30 days of receiving

this Complaint. The answer must clearly admit, deny or explain the factual allegations of the Complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in the Complaint. Such payment need not contain any response to, or admission of, the allegations in the Complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. If Respondent chooses to resolve this proceeding by paying the specific penalty proposed in this Complaint, payment must be made, within thirty (30) calendar days of receipt of this complaint, by sending a certified or cashier's check payable to "Treasurer, United States of America," in care of:

U. S. EPA, Region 8
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

A copy of the check must be mailed simultaneously to the attorney listed below.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Mr. Dana J. Stotsky at 1-800-227-9441, extension 6905 or the address below. Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.

GENERAL ALLEGATIONS

The following general allegations apply to each count of this Complaint:

8. EPA has jurisdiction of this matter under section 16 of TSCA, 15 U.S.C. § 2615.
9. Respondent, Verendrye Electric Cooperative, Inc., a corporation active and in good standing according to the records of the Secretary of State of the State of North Dakota and which originally filed for incorporation on January 26, 1939, is a "person" within the meaning of 40 C.F.R. § 761.3, and thus subject to regulation.
10. Respondent was, at all times relevant to this action, the owner and operator of its facility located in and around Velva, North Dakota.
11. On or about August 18, 2004, Mr. Conrad Carlson, an Environmental Scientist employed by the Division of Waste Management within the North Dakota Department of Health, and an authorized EPA inspector, conducted an inspection of the facility, with the consent of respondent, to determine compliance with TSCA and EPA regulations relating to polychlorinated biphenyls (PCBs), 40 C.F.R. part 761. Notices of inspection and confidentiality were issued to representatives of respondent.
12. The EPA's PCB regulations define "disposal" of PCBs to include "spills, leaks, and other uncontrolled discharges of PCBs...." 40 C.F.R. § 761.3.
13. The PCB regulations require that PCBs, as defined at 40 C.F.R. section 761.3, be disposed of by the incineration or burial methods specified in the regulations. 40 C.F.R. section 761.60.
14. One of the conditions the PCB regulations impose on PCB Transformers and PCB electrical equipment is that they are properly marked and properly stored when they are stored for disposal. 40 C.F.R. Section 761.40, 761.65.
15. During the inspection, the Inspector observed a PCB transformer, GE Serial Number D528873-61p, outside of Respondent's storage-for-disposal area, and which did not exhibit a PCB mark.

COUNT 1

(Failure to Properly Mark PCBs, 40 CFR 761.40)

16. One or about the day of the inspection, the Inspector observed the PCB transformer described in Paragraph 15 above with no PCB mark, as required by 40 CFR 761.40.
17. Respondent's failure to properly mark the PCB transformer described in Paragraph 15 above, as required by 40 C.F.R. § 761.40, constitutes a violation of section 15 of TSCA, 15 U.S.C., section 2614.

COUNT 2

(Failure to Properly Store PCBs for Disposal, 40 CFR 761.65)

18. On or about the day of the inspection, the Inspector observed the PCB transformer described in Paragraph 15 above stored outside of a storage area meeting the conditions prescribed in 40 CFR 761.65
19. Respondent's failure to properly mark the PCB transformer described in Paragraph 15 above, as required by 40 C.F.R. § 761.40, constitutes a violation of section 15 of TSCA, 15 U.S.C., section 2614.

PROPOSED TSCA PENALTY

Section 16 of TSCA, 15 U.S.C. § 2615, as amended, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. § 2605, authorize the assessment of a civil penalty of up to \$27,500 per day of violation for each violation of TSCA. Additionally, on February 13, 2004, the EPA Administrator caused to be promulgated, at 69 Fed Reg 7121, a Final Rule which implements the Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the Debt Collection Improvement Act of 1996, and authorizes EPA to assess civil penalties of up to \$32,500 for TSCA violations occurring on or after March 15, 2004. Should EPA determine that violations alleged herein against Respondent did occur on or after March 15, 2004, EPA provides this NOTICE that it reserves its right for leave to amend any and all pleadings so that such pleadings are consistent with the revised penalty schedule authorized by 69 Fed Reg 7121 (Feb. 13, 2004).

In arriving at a penalty, EPA will take into consideration those factors required by section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(b), which include: the nature, circumstances, extent, and gravity of the violation, and, with respect to respondent, the ability to pay, effect on ability to continue to do business, any history of prior violations, degree of culpability, and other matters as justice may require.

EPA's actions with respect to the assessment of civil penalties are guided by its Polychlorinated Biphenyls (PCB) Penalty Policy, dated April 9, 1990, which provides a rational and consistent method for applying the TSCA statutory factors to the circumstances of a specific case.

Pursuant to section 15 of TSCA, Respondent may be assessed a penalty of up to \$32,500 per violation of TSCA. EPA herein below provides a brief explanation of the severity of each violation alleged and a recitation of the statutory penalty authority applicable for each violation alleged in the complaint, as allowed by 40 C.F.R. § 22.14(a)(4)(ii):

COUNT	PROPOSED PENALTY
Count 1	\$3,000.00
Count 2	\$3,000.00
TOTAL PROPOSED PENALTY	\$6,000.00

ATTACHMENTS

1. Memorandum on Penalty Calculation Justification dated January 11, 2005.
2. Consolidated Rules of Practice, 40 CFR part 22.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 2/1/06

By: Martin Hestmark
Martin Hestmark, Director
Technical Enforcement Program

Date: Feb 01, 2006

By: David Janik
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program
303-312-6917
janik.david@epa.gov

Date: Feb. 01, 2006

By: Dana J. Stotsky
Dana J. Stotsky
Senior Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8
999 18th Street, Suite 300
Mail Code: 8ENF-L
Denver, Colorado 80202-2466
Colorado Bar # 14717
Phone: (303)-312-6905
FAX: (303) 312-6953
stotsky.dana@epa.gov

IN THE MATTER OF: Verendrye Electric Cooperative
EPA Docket No. TSCA-08-2006-0001

CERTIFICATE OF SERVICE

I hereby certify that the attached COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING dated was served as follows:

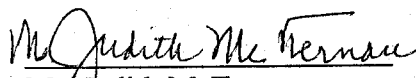
The original and one copy was hand carried to:

Regional Hearing Clerk
U.S. EPA, Region VIII (8RC)
999 18th Street, Suite 500
Denver, CO 80202-2405

A copy was sent via CERTIFIED MAIL, RETURN RECEIPT REQUESTED, postage prepaid, to:

Mr. Everett Dobrinski, Chairman
Verendrye Electric Cooperative
615 Highway 52 West
Velva, North Dakota 58790

2/2/2006
Date


Ms. Judith McTernan



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

Ref: 8ENF-AT

MEMORANDUM

SUBJECT: Penalty Calculation Justification
Verendrye Electric Cooperative
615 Highway 52 West
Velva, ND 58790
Inspection date: 08/18/04

FROM: Kim P. Le
Environmental Engineer

KLe 1/11/05

TO: The record

This is the justification for the penalty calculation accompanying the Verendrye Electric Cooperative inspection report for the inspection of 08/18/04 by Conrad Carlson, of the North Dakota Department of Health office.

The penalty of \$ 6,000 was derived from the PCB Penalty Policy dated April 9, 1990, as follows:

Count 1: 40 CFR 761.40. Marking violation. There was no PCB mark on an empty General Electric PCB transformer, Serial number D 528873. The core of the PCB transformer was still intact with the transformer carcass. This is a non disposal violation of minor extent because the transformer was empty. The culpability level is level II; the violator should have had knowledge or control. Therefore, no adjustment to GBP. This is a High Range, Level Two number 4 violation. According to the Gravity Based Penalty Matrix, the penalty should be \$3,000.

Count 2: 40 CFR 761.65. Storage for disposal violation. An empty General Electric PCB transformer was stored in an open air location. This is a non disposal violation of minor extent because the transformer was empty. The culpability level is level II, the violator should have had knowledge or control. Therefore, no adjustment to GBP. This is a High Range, Level Two number 5 violation. According to the Gravity Based Penalty Matrix, the penalty should be \$3,000.

The total penalty is \$6,000.



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PCB CIVIL PENALTY CALCULATION WORKSHEET

Respondent: Verendrye Electric Cooperative

Address: 615 Highway 52 West, Velva, ND 58790

Prepared by: Kim P. Le

Inspection Date: 08/18/04

	Count 1	Description
A. FTTS Code	CC	Civil Administration Complaint
B. Statutory Violation TSCA	Sect 15	
C. Regulatory Violation 40 CFR	761.40	Marking violation
D. Level Extent: The extent was minor because the total quantity of PCBs was less than 220 gal.	High Range Minor	Level two 4) Non-disposal
1. Gravity Based Penalty:	\$3,000	
2. Culpability adjustment:	0	
3. Violation history adjust:	0	
4. Line 2 + line 3:	\$3,000	
5. GBP x line 4:	\$3,000	
6. Line 1 + line 5:	\$3,000	
7. Enter line 6 amount or \$25,000, whichever is less	\$3,000	
8. Line 7 x # days (or # violations)	\$3,000	
9. Govmt clean-up costs:	NA	
10. Economic gain from non-compliance	NA	
11. Line 8 + line 10:	\$3,000	
12. Adjust as justice may require	NA	
13. Total line 11 + line 12	\$3,000	
Penalty:	\$3,000	

Date: 1/11/05

Signature:

KLe

PCB CIVIL PENALTY CALCULATION WORKSHEET

Respondent: Verendrye Electric Cooperative

Address: 615 Highway 52 West, Velva, ND 58790

Prepared by: Kim P. Le

Inspection Date: 08/18/04

	Count 2	Description
A. FTTS Code	CC	Civil Administration Complaint
B. Statutory Violation TSCA	Sect 15	
C. Regulatory Violation 40 CFR	761.65	Storage for disposal violation
D. Level Extent: The extent was minor because the total quantity of PCBs was less than 220 gal.	High Range Minor	Level two 5) Non-disposal
1. Gravity Based Penalty:	\$3,000	
2. Culpability adjustment:	0	
3. Violation history adjust:	0	
4. Line 2 + line 3:	\$3,000	
5. GBP x line 4:	\$3,000	
6. Line 1 + line 5:	\$3,000	
7. Enter line 6 amount or \$25,000, whichever is less	\$3,000	
8. Line 7 x # days (or # violations)	\$3,000	
9. Govmt clean-up costs:	NA	
10. Economic gain from non-compliance	NA	
11. Line 8 + line 10:	\$3,000	
12. Adjust as justice may require	NA	
13. Total line 11 + line 12	\$3,000	
Penalty:	\$3,000	

Date:

11/11/05

Signature:

K Le

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SOURCE: 64 FR 40176, July 23, 1999, unless otherwise noted.

§21.13

shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.
22.1 Scope of this part.

22.2 Use of number and gender.
22.3 Definitions.
22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
22.5 Filing, service, and form of all filed documents; business confidentiality claims.
22.6 Filing and service of rulings, orders and decisions.
22.7 Computation and extension of time.
22.8 *Ex parte* discussion of proceeding.
22.9 Examination of documents filed.

Subpart B—Parties and Appearances

22.10 Appearances.
22.11 Intervention and non-party briefs.
22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

22.13 Commencement of a proceeding.
22.14 Complaint.
22.15 Answer to the complaint.
22.16 Motions.
22.17 Default.
22.18 Quick resolution; settlement; alternative dispute resolution.
22.19 Prehearing information exchange; prehearing conference; other discovery.
22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

22.21 Assignment of Presiding Officer; scheduling the hearing.
22.22 Evidence.
22.23 Objections and offers of proof.
22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
22.25 Filing the transcript.
22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

22.27 Initial decision.
22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

22.29 Appeal from or review of interlocutory orders or rulings.
22.30 Appeal from or review of initial decision.

Subpart G—Final Order

22.31 Final order.
22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

22.33 [Reserved]
22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

22.36 [Reserved]

22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

22.40 [Reserved]

22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substances Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 308(a)(3) of the Resource Conservation and Recovery Act.

22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

22.46–22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

22.50 Scope of this subpart.
22.51 Presiding Officer.
22.52 Information exchange and discovery.

AUTHORITY: 7 U.S.C. 136(i); 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g–3(g), 6912, 6925, 6928, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

Subpart A—General

§22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136f(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6991e, and 6992d), except as provided in part 24 of this chapter;

(5) The assessment of any administrative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any civil penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(g), 1321(b)(6), and 1342(a));

(7) The assessment of any administrative civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609);

(8) The assessment of any administrative civil penalty under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (“EPCRA”) (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under sections

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POLYCHLORINATED BIPHENYLS (PCB) PENALTY POLICY

United States Environmental Protection Agency

April 9, 1990